

Title 20. Public Health and Welfare

Chapter I. Generally, Department of Health

Subchapter A. Generally

**Part 7. Rules Pertaining to the Arkansas Volunteer Immunity Act for
Healthcare Professionals and the Volunteer Health Care Act**

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Effective: November 28, 2022"

"SEVERABILITY

If any provision of these Rules or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules which can give effect without the invalid provisions or applications, and to this end, the provisions herein are declared severable."

"REPEAL

All rules and parts of rules in conflict herewith are hereby repealed."

"CERTIFICATION

This will certify that the foregoing Rules for Volunteer Licensed Health Care Professionals Immunity Act in Arkansas were adopted by the Arkansas Board of Health at a regular session of same held in Little Rock, Arkansas on the 28th day of July, 2022.

Dated at Little Rock, Arkansas this 18th day of November, 2022.

Jennifer Dillaha, MD

Secretary of the Arkansas State Board of Health

Director of the Arkansas Department of Health"

Subpart 1. General Provisions

20 CAR § 7-101. Purpose.

(a) The purpose of this part is to:

(1) Ensure compliance with:

(A) Arkansas Code § 16-6-201;

(B) The Volunteer Health Care Act, Arkansas Code § 20-8-801 et seq.; and

(C) Arkansas Code § 17-95-106;

(2) Provide for the registration of free or low-cost healthcare clinics, as defined in Arkansas Code § 16-6-201 and herein, under the Arkansas Volunteer Immunity Act, Arkansas Code § 16-6-101 et seq., to provide immunity from civil damages to physicians and licensed healthcare professionals who are rendering free and voluntary professional healthcare services;

(3) Provide for the registration of healthcare providers and medical professionals, as defined in Arkansas Code § 20-8-803 under the Volunteer Health Care Act, who are providing volunteer healthcare services to low-income patients to provide immunity from civil damages to medical professionals who contract with the Department of Health; and

(4) Provide for the registration of retired physicians and surgeons who are licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas and who are providing volunteer healthcare services to provide immunity from civil damages, under Arkansas Code § 17-95-106.

(b) The State Board of Health is responsible for the registration of healthcare professionals, healthcare providers, and clinics pursuant to Acts 1997, No. 276, Acts 2017, No. 958, and Acts 2021, No. 968.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-102. Definitions.

As used in this part:

(1) "Contract" means an agreement executed in compliance with this part between a healthcare professional or a medical professional and the Department of Health or a governmental contractor;

(2) "Free or low-cost healthcare clinic" means a clinic or part of a clinic that:

(A) Provides free or low-cost medical care; and

(B) Accepts no insurance payments for providing medical services;

(3) "Governmental contractor" means:

(A) The county health units;

(B) Special purpose districts with healthcare responsibilities;

(C) A hospital owned and operated by a governmental entity; or

(D) Any other healthcare entity designated by the Department of Health;

(4) "Healthcare professional" as defined in Arkansas Code § 16-6-201, under the Arkansas Volunteer Immunity Act, Arkansas Code § 16-6-101 et seq., means a person who is:

(A) Licensed or certified under Subtitle 3 of Title 17 of the Arkansas Code;

or

(B) A student or resident of a healthcare profession program leading to a professional degree, a license, or certification under Subtitle 3 of Title 17 of the Arkansas Code, who is:

(i) Providing services within the scope of the training of that student or resident; and

(ii) Under the supervision of a person who is licensed in the healthcare profession for which the student is seeking a:

(a) Degree;

(b) License; or

(c) Certification;

(5) "Healthcare provider" means:

(A) A free or charitable healthcare clinic qualified as exempt from federal income taxation;

- (B) A state-funded or federally funded community health center;
- (C) A volunteer corporation or volunteer healthcare provider that delivers healthcare services to low-income patients; and
- (D) Other medical facilities:
 - (i) With the primary purpose to deliver medical services or treatment to humans; and
 - (ii) That include an office maintained by a medical professional;
- (6) "Low-income patient" means a person who:
 - (A) Is eligible for any category of the Arkansas Medicaid Program; or
 - (B) Does not have health insurance and whose annual household income does not exceed three hundred percent (300%) of the federal poverty level;
- (7) "Medical professional" means:
 - (A) A physician, osteopathic physician, or optometric physician;
 - (B) An osteopathic physician assistant, physician assistant, or optometric physician assistant;
 - (C) A chiropractic physician;
 - (D) A podiatric physician;
 - (E) A nurse licensed under Arkansas Code § 17-87-101 et seq.;
 - (F) A dentist, dental hygienist, or dental assistant;
 - (G) A pharmacist;
 - (H) An optometrist;
 - (I) A therapist;
 - (J) An addiction specialist;
 - (K) A counselor;
 - (L) A "healthcare professional" as defined herein;
 - (M) A dietitian or an individual who offers dietary services; and
 - (N) A student enrolled in an accredited program that prepares the student for licensure in one (1) or more of the healthcare professions listed in subdivisions (7)(A) – (L) of this section; and
- (8) "Volunteer healthcare services" means healthcare services rendered

voluntarily and without compensation to any person located in the State of Arkansas by a healthcare professional who:

- (A) Is registered by the Department of Health;
- (B) Does not accept insurance payments; and
- (C) Provides healthcare services free of charge or for a nominal fee to

persons who are unable to pay.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

Subpart 2. Registration Under the Arkansas Volunteer Immunity Act

20 CAR § 7-201. Registration for the free or low-cost healthcare clinic.

(a) It shall be the duty of each free or low-cost healthcare clinic to register with the Department of Health on forms approved by the department upon demonstration that the free or low-cost healthcare clinic:

- (1) Is located in the State of Arkansas;
- (2) Does not accept any insurance payments; and
- (3) Either provides healthcare services:
 - (A) Free of charge to persons unable to pay; or
 - (B) For a nominal fee.

(b) Free or low-cost healthcare clinics that can demonstrate through the registration process that they are rendering free or low-cost healthcare services will be eligible under this program.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-202. Immunity under the Arkansas Volunteer Immunity Act for healthcare professionals.

(a) A healthcare professional who renders volunteer healthcare services to any person at any free or low-cost healthcare clinic registered by the State Board of Health

under 20 CAR § 7-201 shall not be liable for any civil damages for any act or omission resulting from the rendering of the healthcare services unless the act or omission was the result of the healthcare professional's gross negligence or willful misconduct.

(b) The board and its members and the Department of Health and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-203. Required notice to persons receiving healthcare services at free or low-cost healthcare clinics.

(a) Any persons who receive healthcare services from a free or low-cost healthcare clinic must have:

(1) Been fully informed before any treatment by the healthcare professional providing the healthcare services or by the staff of the healthcare clinic of the immunity from civil suit provisions of this section; and

(2) Acknowledged that fact in writing on a form approved or designated by the Department of Health.

(b) The State Board of Health and its members and the department and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

Subpart 3. Registration Under the Volunteer Health Care Act

20 CAR § 7-301. Registration process for healthcare providers.

(a) Any clinic wishing to register as a healthcare provider under the Volunteer Health Care Act, Arkansas Code § 20-8-801 et seq., will be responsible for completing an application with the Department of Health.

(b) An application for registration as a healthcare provider shall include but not be limited to the following:

(1) Specific location of the clinic to include street address and city;

(2) A statement indicating that the mission of the clinic is to provide free or low-cost services;

(3) A list of all medical professionals and their specialties currently providing volunteer services in the clinic;

(4) A statement indicating medical professionals delivering services in the clinic:

(A) Are not receiving any financial or other compensation from the clinic;

and

(B) Are acting on a voluntary basis;

(5) A statement on file that all medical professionals providing services in the clinic:

(A) Have a current professional license; or

(B) Are students under supervision of a person who is licensed in the

healthcare profession for which the student is seeking a:

(i) Degree;

(ii) License; or

(iii) Certification; and

(6)(A) A copy of the clinic's policy for notifying patients that:

(i) The medical professional is rendering voluntary healthcare services; and

(ii) He or she is immune from civil suit.

(B) This policy must be in language understood by the patient.

(c)(1) The application must be returned to the department.

(2) An application meeting the requirements of this part will be approved for a period not to exceed three (3) years.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-302. Registration process for medical professionals.

(a) Any medical professional wishing to provide services as a volunteer shall register with the Department of Health by providing:

- (1) A completed application;
 - (2) A statement indicating that the medical professional's intent is to provide free or low-cost services;
 - (3) Verification that the medical professional is not receiving insurance payment for services rendered, if the medical professional is registering as a healthcare professional for the purposes of Arkansas Code § 16-6-201;
 - (4) A copy of the medical professional's current professional license, or, if a student, a copy of certification the student is currently enrolled in a school/training for which the student is seeking a:
 - (A) Degree;
 - (B) License; or
 - (C) Certification;
 - (5) A statement on file that, if the medical professional is a student, the student is under supervision of a person who is licensed in the medical profession for which the student is seeking a:
 - (A) Degree;
 - (B) License; or
 - (C) Certification; and
 - (6)(A) A copy of the medical professional's policy for notifying patients that the healthcare professional is rendering voluntary healthcare services and that he or she is immune from civil suit.
 - (B) This policy must be in language understood by the patient.
- (b)(1) The application must be returned to the department.
- (2) An application meeting the intent of Acts 1997, No. 276 will be approved for a period not to exceed three (3) years.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

Subpart 4. Applicability of the Volunteer Health Care Act

20 CAR § 7-401. Contracts to provide volunteer health services.

(a) A healthcare provider or medical professional may enter into a contract with the Department of Health or governmental contractor to deliver volunteer health services to eligible low-income patients.

(b) A healthcare provider or medical professional that enters into a contract as described in Arkansas Code § 20-8-804(a)(1) shall be an agent of the state with sovereign immunity while the healthcare provider or medical professional is acting within the scope of duties under the contract as described in this section.

(c) A governmental contractor that is also a healthcare provider is not required to enter into a contract under Arkansas Code § 20-8-801 et seq., with respect to the healthcare services delivered by employees of the governmental contractor.

(d) The contract shall:

(1) Apply only to volunteer healthcare services delivered by the healthcare provider or medical professional to low-income patients who are eligible to receive healthcare services;

(2) Include all employees of the healthcare provider; and

(3) State that:

(A) The healthcare provider or medical professional has sovereign immunity and may not be named as a defendant in an action arising due to medical care or treatment provided within the scope of the contract;

(B) If a patient treated by the healthcare provider or medical professional is ineligible for services, the healthcare provider or medical professional shall still have sovereign immunity and may not be named as a defendant in an action arising due to medical care or treatment provided; and

(C) The department or the governmental contractor has the right to:

(i) Dismiss or terminate any healthcare provider or medical

professional employed under the contract;

(ii)(a) Terminate the contract with a healthcare provider or medical professional with appropriate cause.

(b) At least five (5) business days before the termination date of a contract, the department or governmental contractor shall provide the healthcare provider or medical professional with written notice of intent to terminate the contract and reasons for the decision; and

(iii) Access the records of any patient served by the healthcare provider or medical professional under the contract.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-402. Reporting adverse incidents.

(a) The healthcare provider or medical professional shall report any adverse incidents and information on treatment outcomes to the Department of Health or governmental contractor if pertaining to a patient treated under the contract.

(b) The healthcare provider or medical professional shall also report the adverse incident to the appropriate licensing body to determine whether the adverse incident involves conduct subject to disciplinary action.

(c) Patient medical records and identifying information contained in the adverse incident report shall be confidential and not subject to the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-403. Patient selection, referrals, and emergency care.

(a) The Department of Health, governmental contractor, healthcare provider, or medical provider may make patient selection and initial referrals.

(b) If emergency care is required, the patient shall be referred within forty-eight (48) hours after the latter of the time when treatment commences or the patient has

the mental capacity to consent to treatments.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-404. Reporting to the Department of Health.

Annually, the healthcare provider or medical professional shall report the following information to the Department of Health:

- (1) A summary of the efficacy of access and treatment outcomes;
- (2) Statistics for claims pending and claims paid;
- (3) The amount of defense and handling costs associated with all claims brought against healthcare providers or medical professionals by the healthcare provider or medical professional working under the Volunteer Healthcare Program;
- (4) The operation hours of the healthcare provider or medical professional;
- (5) The number of patient visits by the healthcare provider or medical professional working under the Volunteer Healthcare Program; and
- (6) The value of healthcare-related goods and services provided by the healthcare provider or medical professional working under the Volunteer Healthcare Program.

Authority. Arkansas Code §§ 16-6-201, 20-8-809.

20 CAR § 7-405. Continuing education credit.

(a) A medical professional may fulfill one (1) hour of continuing education credit with the performance of eight (8) hours of volunteer services under the Volunteer Healthcare Program.

(b) A medical professional shall not obtain more than thirty-two (32) hours of credits as described in Arkansas Code § 20-8-805(a) in a licensing period.

Authority. Arkansas Code §§ 16-6-201, 20-8-809.

20 CAR § 7-406. Notice of agency relationship.

(a) The healthcare provider or medical professional shall provide written notice to each patient, parent of the patient, or legal guardian of the patient served under a contract described in 20 CAR § 7-401.

(b) The written notice shall:

(1) Be acknowledged in writing by the patient, the parent of the patient, or the legal guardian of the patient; and

(2) Contain information that the:

(A) Healthcare provider or medical professional is an agent of the state; and

(B) Exclusive remedy for damage or injury suffered as a result of any act or omission by the healthcare provider or medical professional acting within the scope of duties under a contract described in Arkansas Code 20-8-801 et seq., is to file a claim in the Arkansas State Claims Commission.

(c) The healthcare provider or medical professional may comply with the requirements of Arkansas Code § 20-8-806(b)(2)(A) and (b)(2)(B) by posting the notice in a conspicuous place within the place of business of the healthcare provider or medical professional.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-407. Malpractice litigation costs.

A governmental contractor is responsible for costs and attorney's fees for malpractice litigation arising out of healthcare services delivered under a contract brought to the Arkansas State Claims Commission.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

Subpart 5. Registration for Volunteer Services by Retired Physicians and Surgeons

20 CAR § 7-501. Registration of retired physicians and surgeons.

(a) Any retired physicians and surgeons wishing to provide volunteer healthcare services shall register with the Department of Health by providing:

- (1) A completed application;
 - (2) A statement indicating the free or low-cost healthcare clinic where the retired physician will be providing volunteer healthcare services;
 - (3) A statement indicating that the retired physicians' and surgeons' intent is to provide free or low-cost services;
 - (4) Verification that the free or low-cost healthcare clinic is not receiving insurance payments for services rendered;
 - (5) A copy of the medical professional's current professional license; and
 - (6)(A) A copy of the medical professional's policy for notifying patients that:
 - (i) The healthcare professional is rendering voluntary healthcare services; and
 - (ii) He or she is immune from civil suit.
 - (B) This policy must be in language understood by the patient.
- (b)(1) The application must be returned to the department.
- (2) An application meeting the intent of Arkansas Code § 17-95-106 will be approved for a period not to exceed three (3) years.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-502. Immunity from liability for retired physicians and surgeons.

(a) Retired physicians and surgeons who are licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas who render volunteer healthcare services and are registered under this part shall not be liable for any civil damages for any act or omission resulting from the rendering of such medical services unless the action or omission was the result of the retired physicians' or

surgeons' gross negligence or willful misconduct.

(b) The volunteer healthcare services provided by the retired physician or surgeon must be at a free or low-cost healthcare clinic registered with the Department of Health as provided in this part.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.

20 CAR § 7-503. Required notice to persons receiving volunteer healthcare services from a retired physician or surgeon.

(a) Any persons who receive volunteer healthcare services at a free or low-cost healthcare clinic from a retired physician or surgeon must have:

(1) Been fully informed before any treatment by the retired physician or surgeon providing the healthcare services or by the staff of the healthcare clinic of the immunity from civil suit provisions of this section; and

(2) Acknowledged that fact in writing on a form approved or designated by the Department of Health.

(b) The State Board of Health and its members and the department and its agents and employees are exempt and immune from liability for any claims or damages when performing their duties under this section.

Authority. Arkansas Code §§ 16-6-201, 17-95-106, 20-8-809.